

The delicate balance between political equity and freedom of expression

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Americans should never underestimate the constant pressure on Canada which the mere presence of the United States has produced. We're different people from you and we're different people because of you. Living next to you is in some ways like sleeping with an elephant. No matter how friendly and even-tempered is the beast, if I can call it that, one is affected by every twitch and grunt. It should not therefore be expected that this kind of nation, this Canada, should project itself as a mirror image of the United States.
- (Prime Minister) Pierre Elliot Trudeau

We'll explain the appeal of curling to you if you explain the appeal of the National Rifle Association to us.
-Andy Barrie

I. Introduction

Despite many commonalities -- including a 3,000-mile border, at least one language and a crossover popular culture -- political parties in the United States and Canada differ markedly. In the Canadian parliamentary system, parties nominate and mobilize support for candidates to the House of Commons and they are responsible for forming the governments after the elections. Party identification, party leaders and party positions

drive elections in Canada. In the United States, with its presidential system, the candidate predominates. Few voters know or even care about party platforms or the party activists who draft them. Candidates run on individual qualities and values, which are sometimes at odds with the parties they represent. The different roles parties play in these two countries is manifested in the manner in which they are financed. The Canadian political party is a largely public-financed institution to ensure political equity and affordability. In the United States, the political party is privately funded—excepting for the national nominating conventions every four years—and exists as a platform for the candidate and one point of reference for the voter.

The focus of this study includes only federal financing regulation. It is important to note, though, that the United States has fifty-six different systems of regulation, counting the federal along with fifty state laws and those of four territories and the District of Columbia. Regulations vary from the laissez-faire, free-market approach in the State of Virginia to generous public financing in Maine that resembles the Canadian federal system. Likewise, Canada has a total of fourteen jurisdictions, including the federal, ten provinces and three territories. The provinces pass, interpret and enforce legislation with complete autonomy and often serve as an important laboratory for regulatory innovations. As Gene Ward notes in his chapter on disclosure, for instance, legislation passed in Quebec in 1963 and later in New South Wales in 1981 laid the groundwork for more stringent disclosure requirements and public financing on the federal level.

II. Public Financing: A Matter of Degree

During the preparation of this study, Ed Broadbent, the former leader of the New Democratic Party, characterized the Canadian financing regime as one that seeks to promote equality and justice. Limits on contributions and expenses allow newcomers to enter political life without spending millions of dollars. Public funding is provided to Canadian parties and candidates and this public financing was increased under Bill C-24. Indeed, according to Lisa Young of the University of Calgary and an author of this study, an estimated 86 percent of party expenditures in election year 2004 was financed publicly.⁶² The generous public support is not without its critics, however. Some argue that public financing discriminates against smaller parties as it is distributed according to a formula based on past electoral performance and they worry that the high percentage of public funding will discourage small contributors to give and make the parties too dependent on the public purse.

In the United States, in contrast, federal funding of campaigns is available only for the presidential primary and general elections, and the amounts provided represent a small percentage of total spending. (In 2004, the major candidates of both parties -- Howard Dean and John Kerry for the Democrats and George W. Bush for the Republicans

⁶² Anthony M. Sayers and Lisa Young, "Election Campaign and Party Financing in Canada," in *Democratic Audit of Australia*, September 2004, page 4.

-- opted out of public financing for the primaries so as not to be restricted to the allotted amount provided. Bush and Kerry accepted public funds for the general elections, which amounted to about ten percent of the total amount raised and spent by the campaigns.) No public financing is available for elections in the House of Representatives or the Senate. Members of these bodies begin fundraising practically the first day they take office and spend much of their time raising funds until the next election.

III. How Much Do Elections Cost?

The magnitudes of spending between the two countries are telling. As depicted by the chart below, the U.S. spent about 72 times that of Canada in the most recent elections. In the 2004, elections for the U.S. president and congress cost a record \$4.1 billion compared a total of US \$ 56.57 million in Canada. These figures include expenditures by political parties, candidates for congress and the parliament, unaffiliated third parties and, in the case of the United States, the presidential campaigns.

Campaign Spending

Federal Elections of November 2, 2004 in the United States and The 38th General Election for the House of Commons on June 28, 2004 in Canada (US \$ millions)		
	<i>United States</i>	<i>Canada</i>
<i>Presidential campaigns (including primaries)</i>	811	N/A
<i>Congressional/House of Commons candidates</i>	1,105	15.6 (C \$19.5)**
<i>Political Parties</i>	1,616	40.4 (C \$50.5)
<i>Advocacy Groups/ Third Parties</i>	586	.57 (C \$717,000)
TOTALS	4,118	56.57 (C \$70.7)

** Figures for the United States obtained from the Center for Responsive Politics as of January 14, 2005. For political parties and third parties in Canada, figures taken from Elections Canada. While Canada does not have presidential elections like those of the United States, party leadership elections ("nomination contests") are held in each political party. Expenses related to nomination contests were not disclosed and thus unavailable.*

*** Candidate expenditure for Canadian House of Commons based on estimates cited by Lisa Young in Democratic Audit of Australia, September 2004, page 4.*

These comparisons require important qualifications. Canada is a country of approximately 32 million inhabitants, compared with around 290 million in the United States. The Canadian parliamentary system negates the need for a high-stakes, expensive election of the chief executive. Lastly, spending and campaign limits are the cornerstone of the Canadian system, while in the United States such limits are applied mainly to contributions, and only in certain instances.

The manner in which money is spent also differs. Television is by far the largest expense of the presidential campaigns in the United States. Free media in Canada, makes this proportionately less significant expense. According to Herb Alexander, in the 2000 election as much as US \$ 1 billion was spent on political advertising in the United States while Canada spent approximately C\$30.2 million (US \$24.16 million); political advertising in the United States was a full 42 times greater than in Canada.

IV. Equity and Freedom of Expression

The guiding principal of the Canadian political financing regime is equity. For more than three decades, legislation has focused on keeping politics affordable and relatively accessible. As Peter AuCoin notes in his analysis on the Canadian System, this has been achieved by limits on campaign contributions and expenditures ("ceilings") as well as generous public financing for political parties and their candidates ("floors").⁶³

Public funding includes partial reimbursement of election expenses, annual grants for political parties and tax credits for political contributions. While modified in 2003, the political financing regime put in place in the 1970s has maintained its overall relevance and effectiveness due to a public commitment to its objectives and an effective enforcement of its laws.

Freedom of expression, enshrined in the First Amendment of the Constitution, defines the political financing system of the United States. In 1976, the U.S. Supreme Court ruled that limits on campaign expenditures were unconstitutional since they limited speech; they are possible only when imposed as a condition of the acceptance of public financing. The concern in the United States has less to do with cost or accessibility and more with the relationship between contributors and candidates. Recent legislation, for example, has attempted to regulate the amount of money flowing from large contributors, especially corporations and trade unions to political parties. The objective of this reform was not necessarily to make politics less expensive, a probably unattainable goal anyway, but to avoid the appearance of disproportionate influence on these candidates by the large contributors once in office. Rather than floors or ceilings, political party and campaign financing in the United States relies on public disclosure of information. The theory is that candidates should be allowed to raise as much money as they can, but the

⁶³ Peter AuCoin, "Comparative Analysis on Financing Political Parties and Campaigns: Canada," prepared for the Organization of American States. <http://upd.oas.org/fiapp>.

public should have a right to know where that money is coming from. For the most part, the onus of discovering conflicts of interest lies with the general public and the punishment with the voter on Election Day.

V. Enforcement

The manner in which politics is financed in the two countries is manifested in the nature of the enforcement agencies. The six-member Federal Election Commission (FEC) of the United States is comprised of three members of each of the two major parties. The equal presence of both parties ensures that the application of the law will not be enforced in a partisan manner, but outside critics allege that this political balance has sometimes created stalemate. They complain that the FEC is often slow in investigating violations of the law and rarely levies significant punitive sanctions. One important responsibility of the FEC is the administration of political party and campaign financing legislation for federal elections.

The regulatory authority for political financing in Canada is the Chief Elections Officer and his or her agency, Elections Canada. Elections Canada has a broader range of responsibilities, including informing citizens about the electoral process, maintaining the National Registrar of Electors and producing maps of electoral districts, among other things. The Chief Elections Officer is appointed by the Cabinet following a resolution of the House of Commons and can only be removed by a joint resolution of the House of Commons and the Senate. He has the authority to initiate investigations, seek criminal prosecution through the regular court system and negotiate compliance agreements that include sanctions. Clyde Wilcox notes, "The FEC is generally seen as an ineffective regulatory agency in marked contrast to the widespread domestic support for Elections Canada." Proposals to follow the Canadian model (one of the few times that U.S. political reform has overtly pointed to Canada as a possible model) have been met with skepticism by the political parties. With its voting process responsibilities, Elections Canada has a budget more than three times that of the FEC. In 2003, the FEC had an annual budget of US \$50 million in comparison to the CAN \$ 201 million (US \$160.8 million).

VI. Reforming the Systems

Yet some similarities are of note. Disclosure is a hallmark of the political financing regulatory framework in both countries. According to Gene Ward, requirements in both countries date back to the late 1800s, primarily to prevent coercion of government workers to contribute to political campaigns. The catalysts for present day reforms find their roots in the latter half of the 1900s. As Ward notes, political scandals have proven to be one of the principal motivators for far-reaching reforms. The Watergate scandal in 1970 in particular, fostered unprecedented disclosure requirements,

including names and addresses, which allowed the public to link contributors to the candidates and parties they supported. In 1975, the Federal Election Commission was established to enforce enhanced disclosure laws, some of which had already been on the books for decades but never taken very seriously. Both countries require electronic filing and detailed and timely information is available both on campaigns as well as political parties.⁶⁴

Some argue that the American Watergate shadow cast as far as Canada and provided impetus to deep and wide reform in that country. AuCoin identified two motivations for this reform: the desire to control the escalating costs of election and the public consensus that the experience in the United States should be avoided. In 1974, parliament passed the Canada Elections Act, a comprehensive package that included limits on contributions as well as spending, public funding, comprehensive disclosure and access to media. Just one year before the establishment of the U.S. Federal Election Commission, Canadian legislation instituted the office of the Chief Electoral Officer, a politically independent and administratively autonomous official charged with the enforcement of this legislation.

By coincidence or otherwise, both political financing regimes—established within one year of each other nearly three decades ago—experienced additional modifications within one year of each other. While several of the issues addressed were similar, the magnitude of the reforms differed. The Bipartisan Campaign Reform Act (or "McCain/Feingold" as it is more commonly known) in 2002 sought to stem the growing reliance of political parties on unregulated contributions from corporations and trade unions; a reform that could fundamentally change the role of political parties in the United States. Canadian legislation—commonly referred to as C24—also addressed corporate and union contributions to parties, but its enactment was viewed as a relatively minor adjustment to a regime that has been generally regarded as effective. According to AuCoin, "The contribution limits introduced in 2003, especially the outright ban on contributions by corporations and unions to national political parties, was largely, if not exclusively, a response to public perceptions that few, if any, experts thought had any grounding in reality."⁶⁵ Legislation in both countries provided a modicum of compensation for the lost revenue by raising the individual contribution limits and, in the case of Canada, increasing public financing for political parties.

VII. Third Parties

One of the most vexing issues regarding political financing in the United States and to a lesser extent Canada is the role of outside groups, unaffiliated with political parties, but active during political campaigns. Canadian legislation requires that these groups

⁶⁴ One of the few criticisms of the Canadian electoral regime of 1974 was the timeliness of disclosure requirements. Beginning January 1, 2005, parties must file contributions quarterly and party leadership candidates must report weekly in the final four weeks before the party selects its leader.

⁶⁵ AuCoin, page 2.

register with Elections Canada as a "third party," subject to spending limits just like the parties. (Some 63 third parties registered for the 2004 elections.⁶⁶) While the limitations on these third parties have been challenged in the Canadian courts, a recent Supreme Court of Canada decision upheld the limitations on spending. The decisions have favored the regulations and upheld the limitations on spending. In the United States, "political action committees" group together like-minded contributors to support candidates or political party committees. PACs are limited to US \$5,000 per candidate per election and US \$15,000 per party committee per year. There are some 4,000 registered PACs in the United States, of which EMILY's List, an organization that provides support to women candidates, is by far the largest. The BCRA reform called for a moratorium on broadcast advertising 60 days before general elections and 30 days before a primary for such committees. The restrictions have been challenged in U.S. courts, but they remain in place at the writing of this chapter.

Reforms have changed the financing regimes in both countries and it remains to be seen how they will affect political parties. Previous to BCRA, corporations, trade unions and wealthy individuals in the United States could provide unlimited contributions to political parties in the form of "soft money." Soft money could be used only for political party building, issue-oriented or get-out-the-vote activities. These funds could not endorse or defeat any named candidate or coordinate with any particular campaign, but their intent was not difficult to discern. Mobilizing the party base and conducting parallel campaigns for candidates represents the principal *raison d'être* for parties; prohibiting contributions of these large, important contributors, argue the political parties, could weaken them significantly.

The limits on these contributions redirected some money from the political parties to independent, issue-oriented organizations, commonly known as 527s by their classification in the Internal Revenue code. As previously mentioned, the 527s spent nearly \$500 million during the 2004 campaign and while these organizations did not solicit the vote of any one candidate, their political tendencies were clear. Democratic-oriented 527s outraised Republican-oriented 527s by a nearly three-to-one margin. (George Soros alone provided about \$26 million to Democratic leaning 527s.) Money is not always an accurate measure of success, though. With a relatively paltry US\$ 567,000, the "Swift Boat Veterans for Truth" launched one of the most effective advertisement campaigns in the elections.⁶⁷

In Canada, one of the few venues left to corporations to contribute to parties were in the intraparty leadership races, very important in a parliamentary system. Although opposed by his ruling Liberal Party, former Prime Minister Jean Chretien promoted the prohibition of corporation contributions to nomination contests. Indeed, the C\$1,000 limit on corporations, unions and unincorporated associations to candidates in essence

⁶⁶ <http://www.elections.ca>.

⁶⁷ On Nov. 2, *GOP Got More Bang For Its Billion, Analysis Shows*, in *The Washington Post*, December 30, 2004, *Washington Post*, page A01.

made their role minuscule if not irrelevant. Additional limits were enacted for individuals and spending on leadership races with the express intent of providing more opportunities to women and minorities who might not have the same access to the big money as men. It remains to be seen if these limits will actually increase diversity.

VIII. Does financing affect the Political Participation of Women?

Another commonality between the Canadian and the U.S. systems is the attempt to promote and increase the participation of women in politics and this study sought to determine whether or not financing impeded the political participation of women. Each country has single-member districts making the use of quotas not particularly effective; financing was thus considered as both a possible impediment to participation as well as a potential remedy to better promote women in politics. While women hold important political positions in both Canada and the United States, neither country is close to parity. After the most recent elections in the United States and Canada, women's representation in the legislative bodies stands at 14 and 21 percent respectively. (In the 2004 elections, 68 women were elected to the U.S. House of Representatives and 14 to the Senate.) According to the Inter-Parliamentary Union, these percentages rank the United States 57th and Canada 31st among the 135 countries in its worldwide survey.⁶⁸

Different perhaps from Latin America and the Caribbean, financing does not appear to be a major gender-specific obstacle to political participation. Efforts have been made in both countries to better provide for financing to women in the initial stages of their candidacy, the United States through the free market and Canada through public financing. In the United States, EMILY's List has become one of the largest political action committee in the country raising more than \$33 million in 2004 for women candidates who share the organizations' commitment to reproductive rights.⁶⁹

The acronym sums up the organizations' strategy: Early Money is Like Yeast. Other women-oriented political action committees include the National Women's Political Caucus, the Women's Campaign Fund and the WISH (Women in the Senate and the House) List. As previously mentioned, recent reforms in Canada have included spending limits and tax credits for candidates in nomination races. According to Lisa Young, these reforms were championed in particular by female members of parliament. The left-of-center, New Democratic Party took the reforms one step further and has made women candidates eligible for reimbursements of childcare expenses incurred during the nomination process.

⁶⁸ <http://www.ipu.org/wmn-e/classif.htm>

⁶⁹ <http://www.opensecrets.org/pacs>.

IX. How much is too much?

Are elections becoming too expensive? This question has been asked during the preparation of this study as well as by countless reform-minded political regions in the Hemisphere. In the United States and Canada, recent reforms were not enacted a priori to take money out of the system or to necessarily make campaigns cheaper. There was an understanding that political parties need money to survive and candidates need money to mount an effective campaign. Where limits were enacted, compensation was provided. Canada limited corporate contributions, but increased public financing. It sought to remove large donors from the nominating races, but increased tax credits to candidates. The United States prohibited large "soft money" contributions to political parties, but raised the individual limit on hard money contributions. It is not coincidental that in the 2004 U.S. presidential elections, both parties dramatically increased the number of small contributors (less than \$50), providing another outlet for citizen involvement in politics and a sense of ownership of the political system. Both C24 and the BCRA sought to change the potentially deleterious relationship between large funders and politics. In both cases, they have achieved at least part of their objective.

Despite its differences in parliamentary structure, party organization and political objectives, the United States and Canada share important commonalities in their political financing regimes. While free speech is the guiding principle in the United States and equity predominates in the regulatory regime in Canada, free speech flourishes in Canada and people with many different backgrounds win elections in the United States. The principal tool for the federal regulatory regimes of both countries remains information: the timely and accessible information that answers the question posed by Gene Ward in this study: "Who gave how much to whom for what purpose and when?" Disclosure is an important element of these systems and these models merit attention from other countries seeking to improve transparency in political financing.

As demonstrated in the chapters of this study, reform is a process and not an end in itself. Political circumstances will change and future reforms will be introduced. The regimes will continue to evolve as political circumstances change. Reform is enacted to achieve different political ends that reflect the underlying principals of each country. The means may be different, but the end has been the same: to encourage more people to participate in the democratic process of their countries.

